IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5948 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KARAMCHAND T SHAHDADPURI

Versus

KANDLA PORT TRUST

Appearance:

MR KETAN A DAVE for Petitioner No. 1
MR SR BRAHMBHATT for Respondent

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 11/01/2002

ORAL JUDGEMENT

By means of this petition, the petitioner has challenged vires of Regulation 4 (b) of the Kandla Port Employees' (Retirement) Regulation, 1978 read with Regulation 3 (e) and Annexure-A of the Regulations framed

by the Board of the Trustees in exercise of power conferred u/s 28 of the Major Port Trusts Act, 1963 as illegal and ultra virus and for a direction that all the employees who are workmen as defined in the Industrial Disputes Act, 1947 and artisans as defined in Fundamental Rules. 56 (o) - Note, or who belongs to category similar to those enumerated in Schedule-A, including the category of Pump Driver-cum-Mechanic are entitled to continue in service, subject to superannuation upon attainment of sixty years of age and for quashing and setting aside the order dated 3/4-1-1990 in respect of entry no. 8 made in the letter regarding the date of retirement as 31-8-1991 and for a direction to the Post Trust to allow the petitioner to continue in service upto 31-8-1993 and that the petitioner would retire at the age of 60 years.

2. The petitioner was initially appointed as a Pump Driver in September, 1957 and thereafter he was promoted to the post of Driver-cum-Mechanic by the order dated 17-3-1973. In the year 1977, the petitioner was promoted as Chargeman (Water Supply) and then he was reverted as Pump Driver-cum-Mechanic with effect from 17-3-1986. In the year 1986, the Water Supply Work in respect of Gandhidham/Adipur area of Kandla Port was transferred to Gujarat Water Supply and Sewerage Board, and surplus staff of Water Supply Section of Kandla Port Trust was posted/accommodated in other sections/posts in Kandla Port Trust. The petitioner was given option to be accommodated in other section under this Kandla Port Trust. The petitioner opted and he was posted as Pump Driver-cum-Mechanic by the order dated 17-3-1986. In the year 1978, Kandla Port Employees (Retirement) Regulations 1978 was framed and constituted and those Regulations after approval from the Central Government came into force on 7-9-1978. Relevant Regulation of the said Regulation, reads as under :

4. Age of Retirement :

(a) Except as otherwise provided in these regulations, every employee of the Board shall retire from service on the afternoon of the last day of month in which he attains the age of fifty-eight years.

(b) An employee who is a workman and who entered the Board's service before 11th April, 1974, shall retire from service on the afternoon of the last day of the month in which he attains the age of 60

years.

(c) An employee in Class - IV service of post, who was in the service of the Board before 11th April, 1974, shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years.

(d) An employee to whom Sub-Regulation 4(a) applies but who is not a Head of Department may be granted extension of service after he attained the age of 58 years with the Sanction of Chairman if such extension is in public interest and the grounds thereof are recorded in writing. In the case of a Head of the Department, the power to grant such extension of service shall be exercisable by the Central Government after consultation with the Chairman. No extension under this Sub-Regulation shall be granted beyond the age of 60 years in very special circumstances.

Explanation : A person appointed to Class IV post before 11-4-1974 on his appointment after 11-4-1974 to another Class IV post or to any category of post included in the list of workman at Annexure-A, shall retire at the age of 60 years. If he is appointed to a Class III category which is not one of the categories in the list of workmen at Annexure-An he shall retire at the age of 58 years."

It is stated that the category of Pump Driver (Diesel) appears in the said Schedule at Sr. 57. However, the Pump Driver-cum-Mechanic is not included in the said Schedule.

3. The workman has been defined under clause 3 (e) of the Kandla Port Employees (Retirement) Regulations 1978 and as per that clause "workman" means an employee of one of the categories shown in Annexure-A to those regulations. Category of Pump--Driver (Diesel) appears in the said Schedule at Sr. No. 57. Mechanic appears in the said schedule at Sr. No. 6. However, Cadre of however, Pump Driver--Mechanic is not included in the said Schedule. The employees who are workmen in the categories included in the Annexure-A of the aforesaid

Regulations, are entitled to work upto the age of 60 years. While the employees who are not included list of employees are required to retire upon attaining the age of 58 years. As the petitioner is Pump Driver-cum-Mechanic is not included in the Annexure-A, the authority concerned directed the petitioner to retire at the superannuation age of 58 years and accordingly he was retired on 31-8-1991. The petitioner made a representation to the Kandla Port Trust authority to permit him to work upto the age of 60 years. The representation made by the petitioner was turned down by the respondent authority vide letter dated 13-5-1991. It is also stated that several categories higher in pay scale have been included in the Annexure-A to the Schedule of the Regulations while the petitioner's category Pump Driver-cum-Mechanic has not been included in the Schedule of the aforesaid Regulations. The Chargeman (Mechanical) and Chargeman (Electrical) are included in the Schedule. The petitioner's category is lower than the aforesaid category of chargeman. The category of mechanic is also included in the schedule defining workman. The category of Pump Driver (Diesel) which is equivalent to category of Pump Drivers (without the qualifying word 'Diesel'), is also included in the schedule. The petitioner's work which combines in itself the functions of Pump Driver and Mechanic but pump driver cum mechanic is not included in the said Schedule. It is also stated that there is no justification for treating Pump Driver-cum-Mechanic differently in the matter of retirement age as compared to Pump Drivers simpliciter, Mechanic simpliciter Chargeman of different Branches and several other categories.

4. This petition has been filed on the ground that Regulation 48 of the Kandla Port Trust Employees (Retirement) Regulations, 1978 read with Regulation 3 (e) and Annexure-A thereto is ultra vires to Articles 14 & 16 of the Constitution of India insofar as it purports to confine to the application of the provision regarding the age of retirement at the age of 60 years, to the employees covered by the category shown in Annexure-A. The workman defined and enumerated under the category is not based on any scientific classification or on rational basis. The category of Pump Driver-cum-Mechanic is not enumerated in the Annexure while two categories of Chargeman (in pay scale higher than the petitioner's category besides being identical to the category of Chargeman (Water Supply) which is a cadre of promotion from the petitioner's post), are not mentioned in the list. There does not appear to be any justifying reason to treat the enumerated categories under the heading of

workman. Classification of only artificial having no rational nexus with the object of providing higher retirement age for workmen or artisans. The second ground is mentioned that all the employees who are workmen as defined under Section 2 (s) of the Industrial Disputes Act, 1947 or who are artisans as defined in Fundamental Rules. 56 (b) - Note must be considered to be entitled to have the benefits of the provision regarding retirement at the age of 60 years. The petitioner being workman as defined in the Industrial Disputes Act, an artisan as defined in the Fundamental Rules and the employee belonging to a category quite similar to those covered by Schedule-A to the regulation is entitled to continue in service upto the age of 60 years. the order dated 3/4-1-1990 of the respondent authorities requiring the petitioner to retire on 31-8-1991 upon attaining the age of 58 years is ultra vires to Articles 14 & 16 of the Constitution of India.

5. The affidavit-in-reply has been filed by the Assistant Secretary of Kandla Port Trust, stating therein that the petitioner is not a workman under the category as enumerated in Annexure-A of Kandla Port Employees (Retirement) Regulations, 1978 (hereinafter referred to as Regulations, 1978). Regulation 4. (b) of the Regulations, 1978 is clear to the effect that an employee who is a workman and who entered the Board service before 11-4-1974 shall retire from the service at the age of 60 years. The workman is defined in Regulation 3 (e) of Regulations, 1978. The petitioner being Pump Driver-cum-Mechanic does not come within the meaning of workman as defined in Regulation 3 (e) of the Regulations, 1978. The retirement age of the petitioner is 58 years. The petitioner was appointed as Pump Driver with effect from 1-9-1957 and he was promoted to the post of Pump Driver-cum-Mechanic with effect from 14-4-1973 and thereafter he was promoted as Chargeman (Water Supply) with effect from 1-2-1977 and he was transferred and posted as Pump Driver-cum-Mechanic on administrative ground with effect from 15-3-1986. The Kandla Port Employees (Retirement Regulations 1978 came into force with effect from 7-9-1978. Under the Regulation the petitioner is not a workman within the aforesaid definition. The employees should be workman within the contemplation of the Regulations, 1978 on the day on which the question of his retirement arises. As per the judgment of this Court rendered in Special Civil Application No. 2919 of 1983, the employee has to establish is that (i) he is a workman and (ii) he was in service of the respondent Trust before April 11, 1974. If these two conditions are satisfied the employee is

entitled to the benefit of retirement age of 60 years and the employee who is workman has to be decided on the date on which the question of his retirement arises. The petitioner retires on 31-8-1991 and at that time he was Pump Driver-cum-Mechanic which does not come within the category mentioned in Annexure-A to the Regulations, 1978. Hence, the petitioner is not governed by Regulation 4 (b) of the Regulations and he is not workman. Thus, the retirement age of the petitioner is 58 years. It is admitted that the category of Pump Driver (Diesel) appears in the said Schedule at Sr. 57 and the Mechanic at Sr. 6. But the petitioner is not a workman as mentioned in Annexure-A. In the year 1986, Water Supply Work in respect of Gandhidham/Adipur area of Kandla Port Trust was transferred to Gujarat Water Supply and Sewerage Board and surplus staff of Water Supply Section of Kandla Port Trust was posted accommodating in other sections/posts in Kandla Port Trust. Therefore, the petitioner was transferred and posted as Pump Driver-cum-Mechanic with effect from 15-3-1986. The category of Chargeman (Water Supply) is a non-workman category. Had the Water Supply work not been transferred Gujarat Water Supply and Sewerage Board and the petitioner would have continued on the post of Chargeman (Water Supply) which is a non-workman category and he was required to retire at the age of 58 years. The pay scale or designation of post is not a criteria for determining the workman category for the purpose of retirement. The categories of the Chargeman (M) and Chargeman (E) are included in the list but the category of Pump Driver-cum-Mechanic is not included as workman in the list. Electrician in the scale of 1320-2220 is a "Workman" Auto Electrician in the same scale of pay is not included as "Workman" Assistant Foreman (M) and Assistant Foreman (E) carry the same scale of pay but former category is enumerated in the list of workmen but the later category i.e. Assistant Foreman (E) is not included in the workman. In the same manner, the category of Driller is included in the workman category. But the Moulder carrying identical pay scale of Driller is not a workman as per Annexure-A. Chargeman (E) and Chargeman (M) are workmen category. Chargeman (Water supply) is not a workman category. The definition of the workman was arrived at by the respondent Board after analysing all the relevant aspects, duties and responsibilities attached to each and every category. As neither nomenclature of the post nor the pay scale is the criteria for determining the posts as workman. Regulation 6 of the said Regulations 1978 abundantly makes it clear that F.R. 56 as applicable to the employees of the respondent Board immediately before

commencement of the said regulations, will no longer apply to the employees of the Board. Thus, the petition is liable to be dismissed and the petitioner is not entitled to any relief claimed in the petition.

6. Additional affidavit was filed on behalf of the respondents for a limited purpose showing justification for noninclusion. As such, as defined in the impugned Regulation. F.R. 56 as well as Rule 48 of the Regulations 1978 which were adopted by the Board have been replaced by the Kandla Port Trust Employees (Retirement) Regulations, 1978 and those Regulations were submitted to the Board in it meeting held on 29-3-1978. The issue could not be decided due to certain reasons. The draft resolution was accordingly discussed and the suggestions made by Mr. A.K. Shah were also recorded and with other trustees discussion was made after giving opportunity to the Labour Representatives under item no. 14.2. Shri A.K. Shah (Labour Trustee) stated that the points which have been made by him were aimed at ensuring that once the employee has the age of superannuation of 60 years it should remain the same irrespective of whether he gets promotion to higher post. Under item No. 14.8 Shri Manohar Kotwal stated that all the employees are workman and therefore there should be no difficulty in making addition to the list of workman annexed to the regulations. Under Item No.14.4., it was Chairman's clarification which has elaborately stated as to why other categories are not included. The Chairman pointed out that as per the recommendations of the Wage Board, the age of 60 years as retirement age, what had been done was to keep for those persons so long as they remain in the same category the age by 60 years, for all others the age of retirement is 58 years. The Chairman also stated that the special provision of 60 years for certain category has been made for employees who were in service prior to 11-4-1974. There was no ground for adding any more categories in the list. Under item No. 14.5 which is set out as whether Shri Manohar Kotwal stated that the item might be approved but the Chairman might give consideration to new categories, if any, which might be suggested by the Union for inclusion in the annexure to the regulations. Under Item No. 14.6, the Board approved the proposal and resolution 60 resolved to make the retirement regulations for the employees of the Board as per notification at Annexure-VI subject to the approval of the Union Government. It was provided under the aforesaid Regulations that every employee of the Board was to retire from the service on attaining the age of 58 years. Exception has been made under the Regulations that the employee who is workman and who

entered the Board's service before 11-4-1974 will retire on attaining the age of 60 years. Under Explanation, a person appointed to a Class IV post before 11-4-1974 on his appointment and transferred after 11-4-1974 to another Class - IV post or to any category of post included in the list of workmen at Annexure-A shall retire at the age of 60 years. If he is appointed to a Class III category which is not one of the categories in the list of workman at Annexure A, he shall retire at the age of 58 years. As per clarification given by the Chairman in the Board meeting, the exception was required to be carved out from the retirement age of 58 years only for those employees who were under the categories already enjoying the age of 60 years as retirement age. Thus, any other category and / or employee who are not fulfilling these two categories were to retire at the age of 58 years.

7. Rejoinder affidavit has already been filed stating therein that the Pump Driver is not included in the list to be termed termed as "Workmen" for the purpose of Regulation 3 (e) of the Kandla Port Employees (Recruitment) Regulations. At the same time category of Pump Driver (Diesel) has been included in the list of Workman at Sr. No. 57. There were 40 Pump Drivers (Not Pump Drivers (Diesel). All these Pump Drivers were allowed to retire at attaining age of 60 years. Keshaji and Atu Shamji were working in Kandla Port Trust as Pump Drivers and they were not Pump Drivers (Diesel). They were allowed to retire at 60 years. Pump Driver is a category of workman. Mechanic is also a category of workman. Therefore, clubbing of these two categories and re-designating into one category viz. Pump Driver-cum-Mechanic, would not render it into a category of non-workman. Category of Driver (Motor) and the category of Pump Operator were clubbed together and redesignated as Pump Operator-cum-Driver and they are under category of workman. However, the Pump Operator-cum-Driver was not included in the list of workman. The Board has corrected the mistake and subsequently, in the year 1979, the category of Pump Operator-cum-Driver has been included in the list of workmen by way of amendment. Categories of Winchman, Quarter Master and higher categories within prefix of senior were added in the list of work in the year 1986. The list of workmen shown under the Regulations is not complete and exhaustive. The respondent authority has from time to time amended the said list and several categories of workmen are subsequently included in the list of workmen.

8. The petitioner worked as Pump Driver and used to operate diesel as well as electric Pumps. As a Pump Driver-cum-Mechanic, the petitioner was attending the defects and/or repairs and maintenance of machine. As such, the petitioner comes in the category of workman and hence he is entitled to all the benefits including the salary and allowance etc. as if he retired on attaining the age of 60 years.

9. I have carefully considered the contentions made by the learned counsel for the petitioner and perused the relevant papers on the record of this case.

10. The draft recruitment regulations for Kandla Port Employees are to replace fundamental Rules 56 as well as Rule 48 of the Central Civil Services (Pension) Rules of the Central Government which were adopted by the Board and the said regulations in draft were submitted to the Board in its meeting held on 20-3-1978. However, that issue was deferred as 2 Labour Trustees Shri Manohar Kotwal and Shri A.K. Shah suggested that these regulations first be discussed with the Union Representatives. Thereafter, the meeting was convened and an opportunity of hearing was given to the union representative. Elaborate submissions were made at the time of hearing with the other labour trustees. Certain items were clarified and were deleted and certain items were included and the classification was made under different Articles. The conclusion was made having with regard to the fact that certain categories already had the age of 60 years as retirement and that was made continue till they remain in the same category and the retirement age for them remained as 60 years but the age for all others the age of retirement is 58 years.

11. As regard the age of retirement it was settled that except as otherwise provided in the regulations, every employee of the Board shall retire from service on the afternoon of the last day of the month in which he attains the age of 58 years. Some exception was made to the aforesaid Rules to the extent that the employee who is a workman within the definition of workman under the category shown at Annexure-A to the Regulations and who had entered the Board's service before 11-4-1974, to retire from service at the age of 60 years. Annexure-A to the Regulations has been framed by the Kandla Post Trust Board after considering the material on record, terms and conditions of the High Power Committee, irrespective of the pay scale or nature of the work or duty and the Regulations stated above have been approved by the Central.

12. The contention of the learned counsel for the petitioner is that the Regulations do not provide any reason for making classification of the employees or workmen mentioned in Annexure-A to the Regulations, is not tenable and sustainable in the eye of law in view of the fact that the High Power Committee after hearing the members and affording an opportunity of hearing to the representatives of the Union and considering the nature and duty of the workman, this Court does not find any reason to pass and to mould definition of workman mentioned in the Regulation only on the basis that no classification has been prescribed.

13. Learned counsel for the respondent has pointed that there are various posts which have been included as workman after permission, they are not included as workman. Only those the employees have been included in Annexure-A to the Regulation as workman for applicability of the retirement age of 60 years. As the definition of workman has been given in the context of the employees mentioned in Annexure-A to the Regulation that cannot be compared with the workman defined under the Indian Industrial Disputes Act or artisan in Fundamental Rules.

14. In the facts and circumstances of the case, I do not find any good ground calling for interference by this Court in exercise of extra ordinary jurisdiction under Article 226 of the Constitution of India. As such, this petition deserves to be dismissed. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated forthwith.

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